

NOTICE OF INTENT

Department of Environmental Quality
Office of the Secretary
Legal Division

Deletion of the Significant Monitoring Concentration for PM_{2.5}; Addition of
Significant Impact Levels for PM₁₀, SO₂, NO_x and CO
(LAC 33:III.509) (AQ349)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.509 (AQ349).

This rule will remove significant monitoring concentration (SMC) for PM_{2.5} from LAC 33:509.I.5.a. Significant impact levels (SILs) for PM₁₀, SO₂, NO_x, and CO to Louisiana's Prevention of Significant Deterioration (PSD) program will be added to LAC 33:III.509.K.

On December 20, 2012, the department incorporated into the air regulations certain provisions of the Environmental Protection Agency's (EPA's) final rule entitled "Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)", which can be found at 75 FR 64864, October 20, 2010. At that time the department also added the SMC for PM_{2.5}, into the air regulations.

However, on January 22, 2013, the U.S. Court of Appeals for the D.C. Circuit found that EPA lacked the legal authority to adopt and use the PM_{2.5} SMC to exempt permit applicants from the statutory requirement to compile and submit ambient monitoring data (*Sierra Club v. EPA*, No. 10-1413). Consequently, the vacated SMC for PM_{2.5} was removed from the federal PSD rules, 40 CFR 51.166 and 40 CFR 52.21, on December 9, 2013 (78 FR 73698). At the same time, EPA also instructed permitting authorities to revise the numerical value of the PM_{2.5} SMC to 0 µg/m³ (or make equivalent changes) as soon as feasible. This rulemaking will delete the PM_{2.5} SMC from LDEQ's PSD program.

This rulemaking will also adopt the SILs for PM₁₀, SO₂, NO_x, and CO promulgated by EPA at 40 CFR 51.165(b)(2) and those for Class I areas proposed by EPA at 61 FR 38250, 38331. Though states are not required to adopt SILs in their PSD programs (these values are not required by the Act as part of an approvable State Implementation Plan), it remains EPA's longstanding policy to allow the use of the SILs to determine: 1.) whether the air quality impacts attributed to a proposed new major stationary source or major modification warrant a comprehensive (cumulative) source impact analysis; 2.) the size of the impact area within which the air quality analysis is conducted, and 3.) whether air quality impacts are considered to cause or contribute to a violation of a NAAQS or PSD increment.

The basis and rationale for this rule are to delete the SMC for PM_{2.5} from the air regulations and add SILs for PM₁₀, SO₂, NO_x, and CO to Louisiana's PSD program under LAC 33:III.509.

This rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

This rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

This rule has no known impact on poverty as described in R.S. 49:973.

This rule has no known impact on providers as described in HCR 170 of 2014.

A public hearing will be held on November 25, 2014, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Deidra Johnson at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ349. Such comments must be received no later than December 2, 2014, at 4:30 p.m., and should be sent to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Division, Box 4302, Baton Rouge, LA 70821-4302 or to FAX (225) 219-4068 or by e-mail to deidra.johnson@la.gov. Copies of these proposed regulations can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ349. These proposed regulations are available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

These proposed regulations are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson, CPM
Executive Counsel

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 5. Permit Procedures

§509. Prevention of Significant Deterioration

A. - I.5.a. ...

	* * *	
Particulate matter	10 $\mu\text{g}/\text{m}^3$ of PM_{10} 4 $\mu\text{g}/\text{m}^3$ of $\text{PM}_{2.5}$	24-hour average 24 hour average
	* * *	

I.5.b. - J.4. ...

K. Source Impact Analysis

1. ...

a. any national ambient air quality standard (NAAQS) in any air quality control region; or

b. any applicable maximum allowable increase over the baseline concentration in any area (i.e., PSD increment).

2. ~~Reserved.~~ Significant Impact Levels

a. The demonstration required in Paragraph K.1 of this Section is deemed to have been made if the emissions increase from the proposed source or modification alone would cause, in all areas, air quality impacts less than the following amounts:

<u>Pollutant and Averaging</u> <u>Time</u>	<u>Micrograms per Cubic</u> <u>Meter</u>
<u>Class I</u>	
Particulate matter:	
<u>PM₁₀, Annual</u>	<u>0.2</u>
<u>PM₁₀, 24-hour</u>	<u>0.3</u>

<u>Pollutant and Averaging Time</u>	<u>Micrograms per Cubic Meter</u>
<u>Sulfur dioxide:</u>	
<u>Annual</u>	<u>0.1</u>
<u>24-hour</u>	<u>0.2</u>
<u>3-hour</u>	<u>1.0</u>
<u>Nitrogen dioxide:</u>	
<u>Annual</u>	<u>0.1</u>
<u>Class II</u>	
<u>Particulate matter:</u>	
<u>PM₁₀, Annual</u>	<u>1.0</u>
<u>PM₁₀, 24-hour</u>	<u>5.0</u>
<u>Sulfur dioxide:</u>	
<u>Annual</u>	<u>1.0</u>
<u>24-hour</u>	<u>5.0</u>
<u>3-hour</u>	<u>25.0</u>
<u>1-hour</u>	<u>7.8</u>
<u>Nitrogen dioxide:</u>	
<u>Annual</u>	<u>1.0</u>
<u>1-hour</u>	<u>7.5</u>
<u>Carbon monoxide:</u>	
<u>8-hour</u>	<u>500</u>
<u>1-hour</u>	<u>2000</u>

b. Notwithstanding Subparagraph K.2.a of this Section, where the air quality impacts attributed to the proposed source or modification alone are less than the amounts listed above, the administrative authority may require the demonstration described in Paragraph K.1 of this Section if such impacts could result in violations of a NAAQS or PSD increment.

L. - AA.15.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:348 (June 1988), LR 16:613 (July 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:478 (May 1991), LR 21:170 (February 1995), LR 22:339 (May 1996), LR 23:1677 (December 1997), LR 24:654 (April 1998), LR 24:1284 (July 1998), repromulgated LR 25:259 (February 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2447 (November 2000), LR 27:2234 (December 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2437 (October 2005), LR 31:3135, 3156 (December 2005), LR 32:1600 (September 2006), LR 32:1843 (October 2006), LR 36:2556 (November 2010), LR 37:1148 (April 2011), repromulgated LR 37:1389 (May 2011), amended LR 37:1570 (June 2011), repromulgated LR 37:2146 (July 2011), amended by the Office of the Secretary, Legal Division, LR 38:3163 (December 2012), LR 39:1280 (May 2013), LR 41:**.

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULESLOG #: AQ349

Person

Preparing

Statement: Bryan D. Johnston
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Office: Environmental Services

Return

Address: 602 North Fifth Street
Baton Rouge, LA 70802Rule Title: Deletion of Significant Monitoring
Concentration for PM_{2.5}; Addition of
Significant Impact Levels for PM₁₀,
SO₂, NO_x, and CO

Date Rule

Takes Effect: Upon Promulgation

SUMMARY

(Use complete sentences)

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There are no estimated implementation costs or savings to state or local governmental units as a result of the proposed rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no estimated effect on revenue collections of state or local governmental units as a result of the proposed rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

Permit applicants proposing to construct a new major stationary source or major modification which will trigger Prevention of Significant Deterioration (PSD) review for particulate matter (PM_{2.5}) will be affected by deletion of the significant monitoring concentration, or SMC, for PM_{2.5}. The rule will require applicants to determine ambient concentrations of PM_{2.5} prior to approval of the project, either by analyzing data collected from an LDEQ-operated monitor (if representative) or by installing a monitor at the project site. Applicants would choose to install a stand-alone monitor (at applicant's expense) if the applicant's research indicated that the LDEQ-operated monitor would record higher ambient concentrations of PM_{2.5} than would be recorded by the closest LDEQ-operated monitor in current operation. Based on estimates from a vendor, a stand-alone PM_{2.5} analyzer, including shelter and requisite communications equipment, would cost approximately \$30,000. It is not possible to estimate costs associated with deletion of the PM_{2.5} SMC because LDEQ has no knowledge of prospective projects that will trigger PSD review for PM_{2.5}. LDEQ would not know the location of such projects or know if monitors will have to be installed.

All permit applicants proposing to construct a new major stationary source or major modification which will trigger PSD review for PM₁₀, SO₂, NO_x, and/or CO will be impacted by the addition of significant impact levels (SILs). This aspect of the proposed action will have no effect on costs, including workload adjustments or additional paperwork.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition or employment in the public or private sector as a result of the proposed rule.

Signature of Agency Head or Designee

Legislative Fiscal Officer or Designee

Herman Robinson, CPM, Executive Counsel
Typed Name and Title of Agency Head or Designee

Date of Signature

Date of Signature

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

The following information is requested in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberation on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption, or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

This rule will delete the significant monitoring concentration (SMC) for PM_{2.5} from and add significant impact levels (SILs) for PM₁₀, SO₂, NO_x, and CO to Louisiana's Prevention of Significant Deterioration (PSD) program under LAC 33:III.509.

- B. Summarize the circumstances which require this action. If the Action is required by federal regulation, attach a copy of the applicable regulation.

LDEQ incorporated certain provisions of the Environmental Protection Agency's (EPA's) final rule entitled "Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC),"¹ including the SMC for PM_{2.5}, into the Louisiana air quality regulations on December 20, 2012 (AQ328ft).

However, on January 22, 2013, the U.S. Court of Appeals for the D.C. Circuit found that EPA lacked the legal authority to adopt and use the PM_{2.5} SMC to exempt permit applicants from the statutory requirement to compile and submit ambient monitoring data (*Sierra Club v. EPA*, No. 10-1413). Consequently, the vacated SMC for PM_{2.5} was removed from the federal PSD rules, 40 CFR 51.166 and 40 CFR 52.21, on December 9, 2013 (78 FR 73698). At the same time, EPA also instructed permitting authorities to revise the numerical value of the PM_{2.5} SMC to 0 µg/m³ (or make equivalent changes) as soon as feasible. This rulemaking will delete the PM_{2.5} SMC from LDEQ's PSD program.

This rulemaking will also adopt the SILs for PM₁₀, SO₂, NO_x, and CO promulgated by EPA at 40 CFR 51.165(b)(2) and those for Class I areas proposed by EPA at 61 FR 38250, 38331. Though states are not required to adopt SILs in their PSD programs (these values are not required by the Act as part of an approvable State Implementation Plan), it remains EPA's longstanding policy to allow the use of the SILs to determine: 1.) whether the air quality impacts attributed to a proposed new major stationary source or major modification warrant a comprehensive (cumulative) source impact analysis; 2.) the size of the impact area within which the air quality analysis is conducted, and 3.) whether air quality impacts are considered to cause or contribute to a violation of a NAAQS or PSD increment.

¹ 75 FR 64864, October 20, 2010

- C. Compliance with Act 11 of the 1986 First Extraordinary Session

- (1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

No, the proposed rule will not result in any increase in the expenditure of funds.

- (2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

(a) ____ Yes. If yes, attach documentation.

(b) ____ No. If no, provide justification as to why this rule change should be published at this time.

This question is not applicable.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase (decrease) in costs to implement the proposed action?

No costs or savings to state agencies are anticipated as a result of the proposed rule.

COSTS	FY 14-15	FY 15-16	FY 16-17
PERSONAL SERVICES	-0-	-0-	-0-
OPERATING EXPENSES	-0-	-0-	-0-
PROFESSIONAL SERVICES	-0-	-0-	-0-
OTHER CHARGES	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-
MAJOR REPAIR & CONSTR.			
POSITIONS (#)	-0-	-0-	-0-

2. Provide a narrative explanation of the costs or savings shown in "A.1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

This question is not applicable.

3. Sources of funding for implementing the proposed rule or rule change.

SOURCE	FY 14-15	FY 15-16	FY 16-17
STATE GENERAL FUND	-0-	-0-	-0-
AGENCY SELF-GENERATED	-0-	-0-	-0-
DEDICATED	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-
OTHER (Specify)	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

No additional funds are required to implement the proposed action.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

No impact on local governmental units is anticipated.

2. Indicate the sources of funding of the local governmental unit which will be affected by these costs or savings.

There will be no costs or savings to local governmental units, so no funding sources will be affected.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

A. What increase (decrease) in revenues can be anticipated from the proposed action?

No increase or decrease in revenues to state or local governmental units will be realized.

REVENUE INCREASE/DECREASE	FY 14-15	FY 15-16	FY 16-17
STATE GENERAL FUND	-0-	-0-	-0-
AGENCY SELF-GENERATED	-0-	-0-	-0-
RESTRICTED FUNDS*	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-
LOCAL FUNDS	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-

*Specify the particular fund being impacted.

B. Provide a narrative explanation of each increase or decrease in revenues shown in "A." Describe all data, assumptions, and methods used in calculating these increases or decreases.

No increase or decrease in revenues will be realized.

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS

A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

The proposed revisions pertain to LDEQ's Prevention of Significant Deterioration (PSD) program, LAC 33:III.509. Permit applicants proposing to construct a new major stationary source or major modification which will trigger PSD review for PM_{2.5} will be affected by deletion of the significant monitoring concentration, or SMC, for PM_{2.5}. PSD regulations generally require permit applicants to provide air quality monitoring data gathered over a period of at least one year preceding submittal of their application (LAC 33:III.509.M.1). Previously, LDEQ could exempt an applicant from this requirement for PM_{2.5} if the air quality impact attributed to the new source or modification was less than its SMC. This exemption is no longer available to permit applicants.

In lieu of onsite monitoring, permit applicants may use data collected from LDEQ's existing monitoring network, provided LDEQ deems such data as representative of the air quality in the area of the project. However, if data from an LDEQ-operated monitor cannot be used, or the applicant believes monitored readings at LDEQ's monitoring sites drastically overestimate PM_{2.5} concentrations at the project location, the applicant would have to monitor for PM_{2.5}. Based on estimates from a vendor, a stand-alone PM_{2.5} analyzer, including shelter and requisite communications equipment, would cost approximately \$30,000.

It is not possible to estimate costs associated with deletion of the PM_{2.5} SMC, primarily because LDEQ has no knowledge of prospective projects that will trigger PSD review for PM_{2.5}, or, based on the location of any such project, whether a monitor will have to be installed.

All permit applicants proposing to construct a new major stationary source or major modification which will trigger PSD review for PM₁₀, SO₂, NO_x, and/or CO will be impacted the addition of significant impact levels (SILs). This aspect of the proposed action will have no effect on costs, including workload adjustments or additional paperwork.

B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

No impact on receipts or income of the affected persons or non-governmental groups is expected.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

There will be no effect on competition or employment in the public or private sector.